

No. 4825 號五十三百八千四第 日五初月四年酉癸治同 HONGKONG, THURSDAY, 1st MAY, 1873. 四拜禮 號一月五英 港香 PRICE \$24 PER MONTH.

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For 1873.

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THE COAST OF CHINA;

besides other local information and statistics corrected to date of publication, tending to make this work in every way suitable for Public, Mercantile, and General Offices.

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The Daily Press.

No. 30, King's Road, 1873.

The point which was raised by the Hon. Mr.

BALL in the Legislative Council on Tuesday,

with respect to the possibility of the seizure

of a foreign ship in the Harbour of Hong-

kong for contravention of the regulations of

the Colony with reference to the coaling trade,

is of very great importance. It is to be

regretted that the nature of the discussion in

Committee in the Legislative Council, is such

as not to afford the public an opportunity of

having the full advantage of the learning of

the legal gentlemen who spoke upon the

question. The remarks made were in a great

measure of a conversational character, and

being addressed from one legal gentleman to

another, were rather indicative of various

points which would naturally occur to legal

minists, than explanatory of the state of the

case to people at large. We, therefore, write

with a certain amount of diffidence on the

subject, being unaided by the professional

information which the more formal discus-

sions of the Law Courts usually brings for-

ward—but we think there was sufficient in

the remarks which were made to indicate

broadly the direction in which the danger

which the Hon. Mr. BALL apprehended

seems to lie. Mr. BALL's impression is, stated

briefly, that it might be an invasion of the

sovereignty of the Colony by a foreign vessel,

even when in this harbour, for non-compliance

with such an Ordinance as the one which was

under consideration. The CHIEF-JUSTICE,

on the other hand, considered that we should

have the full right to do so, because the

vessel would be within our waters, and would

act in opposition to the local laws, with which,

when within the waters, she was bound to

comply. The ATTORNEY-GENERAL took a

middle course, and said he did not see that

there would be any breach of comity, inas-

much as under the Chinese Passengers' Act

the right to seize a vessel evading it, was

asserted by the Imperial Legislature, and the

correctness of this had not been questioned.

Incidentally, however, the ATTORNEY-GE-

NERAL made a rather important remark, in

drawing a distinction between seizing a

foreign vessel, under such circumstances, for

what were *mala in se*, and for doing so for

what were *mala prohibita* only. This dis-

tinction, as we think will appear further on,

has much to do with the true merits of the

question, and is the point upon which the

apparent justice of Mr. BALL's objection

mainly turns.

The question as to the jurisdiction which

a given nation exercises over foreign vessels

in its own waters, has been one of fertile

discussion, but is now definitely settled.

A vessel on entering the harbour of a foreign

power, is bound by the laws of the country in

respect to all matters which form a breach

of the peace of that country; but matters

concerning the mere discipline of the

ship come under the law of the

flag even in foreign waters. The first

question which arises on the supposition of

the seizure of a foreign vessel in this Harbour,

is whether that vessel has been guilty of

anything which is an invasion of the peace

of the Colony. What would be the charge?

It is such preparations as the Ordinance prohibits were actually made, it would seem that the matter might come under the laws of Hongkong; though there is still room to question whether this would amount to a breach of the peace of the port, as recognised by the latest and best international opinion on the subject. But the Ordinance goes so far as to provide (see 8) that "any Police Magistrate upon being satisfied that there is reasonable and probable cause for believing that a ship within the waters of the Colony has been, or is being, built, altered, repaired, or equipped, or is about to be despatched and taken out to sea contrary to the provisions of this Ordinance, may issue a warrant, stating that there is reasonable and probable cause for believing as aforesaid, and upon such warrant the ship may be seized, searched, and detained until it has been either condemned, or released by process of law, &c.," and the next section provides that the military or naval authorities may be called in to assist in effecting the seizure, and that the officers granting the assistance shall be fully indemnified against the Queen's Majesty, and all persons killed, maimed, or hurt."

Now, let it be observed, all this is to be done not because the vessel has committed any actual breach even of the laws of the Colony, but because a Police Magistrate is satisfied that there is reasonable and probable cause for believing that she is about to be equipped for a purpose in which, though it would be illegal for a British ship to engage, it is legal for a foreign ship to engage. These are strong powers to confer upon the Colony which no foreign ship distinguished itself by the arrest of the French mail steamer *Arctur*, and whose desecration as to international questions has certainly not been proved to be the best in the world. Supposing the Magistrate is mistaken in being satisfied of the reasonable and probable cause for believing, can anyone for a moment argue that a breach of neutrality would not have been committed? No invasion of the peace of the port would have been made; and consequently the vessel would be as much under her own flag as if she were on the open sea—and the act would be precisely equivalent to seizing the vessel of a friendly power on the high seas.

Next, supposing that the Magistrate was right, and that there was not only reasonable and probable cause for believing, &c., but that a foreign vessel in Hongkong waters actually did commit a breach of the regulations here as to fitting up for the coaling trade—would that be such an invasion of the peace of the port as would justify her seizure? The ATTORNEY-GENERAL's point concerning *mala prohibita* and *mala in se* here comes in. Whatever opinion the English Government may have concerning the coaling trade, the foreign nation whose vessel was seized might, and probably would, declare that it did not recognise that carrying Chinese Emigrants was a crime, and would certainly have very strong grounds for arguing that at least it was not necessarily so, and we had no right to assume that its vessel would do that illegally, which it was quite possible to do legally, and that until the latter was proved there were no grounds at all for the seizure of the vessel, beyond the question of invading the peace of the port—and we might then be thrown upon the very first point whether, for example, "altering or repairing a ship for the purpose of carrying Chinese emigrants to be embarked at any port or place out of the Colony," constituted such a breach of the peace of the port as would justify so severe a step as seizing the vessel.

The CHIEF-JUSTICE remarked at the Council that we should never allow a slave to fit up; but piracy *jure gentium* denationalizes a vessel, makes her the enemy of the whole world, and subject to be captured by any one. If the coaling trade really were a slave trade, we should not only have the right (and that without any Ordinance) to seize vessels engaged in it in Hongkong, but also on the high seas—but if the traffic is not a slave trade, and it would be difficult to show that it was so, so as to justify such a step as capturing a vessel, this argument is of no force; and it must be borne in mind that, if any international question arose, the point as to whether the vessel was a slave or not, would have to be decided in some other way than by the Supreme Court of the Colony effecting the seizure.

On the other hand, the reason for its being justifiable, as noticed by the ATTORNEY-GENERAL, to seize a foreign vessel for breach of the Chinese Passengers' Act in our waters, is evident, inasmuch as regulations as to the shipment of passengers from a nation's own territory are matters so clearly coming within its jurisdiction, that there can be no possible question that evaluating them is an invasion of the peace of the port; and the same reasons apply to the non-payment of duties, which was instanced by H.E. the GOVERNOR; but it is by no means so clear that an invasion of the peace of the port is committed by preparing in it to do an act which is legal where it is to be committed. The opinion of so learned a Judge as the late Justice WILLIAMS was, according to the ATTORNEY-GENERAL's statement, that such was not an infringement of the law of the place where such preparation was made.

It is very easy to say off handily that no international question is ever likely to arise; but we think there is sufficient in the remarks made above to show that there are very just grounds for fearing a complication of the kind, and it is not to be overlooked that no little feeling has been evoked on the part of foreign nations by the strong language which has been used regarding the likelihood that under such circumstances the likelihood is that, should an opening ever be left for raising a question of international right in regard to action taken under the last Coaling Ordinance, that opening will be availed of, if not with avidity, at least without hesitation.

LATE TELEGRAMS.

REUTERS' TELEGRAMS.

SUPPLIED TO THE "DAILY PRESS."

LONDON, 27th April, 1873.

SPAIN.

Spanish affairs press the collapse of the

Carliste. Alfonso and his staff have returned

France.

THE ACHERON EXPEDITION.

The Dutch are energetically acting so as to

strengthen their naval and military forces in

Java, and are dispatching 14 steamers and

large quantities of war material.

Hongkong, 27th April, 1873.

UNIVERSITY INTELLIGENCE.

The fellows of Saint Paul's College are at present in the habit of being very much interested that the building will in future be devoted to educational purposes.

LEGISLATIVE COUNCIL.

April 30th.

The Council met pursuant to adjournment.

Present:

H.E. the GOVERNOR.

Hon. J. S. SMITH, Chief Justice.

Hon. G. SMITH, Acting Col. Secretary.

Hon. J. P. PANGLOSS, Attorney-General.

Hon. C. MAY, Acting Colonial Treasurer.

Hon. H. J. BALL.

Hon. J. A. G. WILSON.

Hon. JAMES WHITALL.

The minutes of the last meeting were read and confirmed.

ADDRESS CONNECTED WITH THE COALING TRADE.

The Attorney-General, in the jurisdiction

Committee, commencing at the procedure in the

Supreme Court. The Attorney-General pointed

out that the rules were framed so as to

enable a Magistrate to prevent any ship from

engaging in a trade which would be a breach

of the peace of the port, and that the

Magistrate had the power to issue a warrant

for the seizure of a ship, and that the

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